

NO. COA14-984

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

Cumberland County

No. 09 CRS 62270

TERRY LEE BROUSSARD, JR.

Appeal by defendant from judgment entered 5 September 2013 by Judge James G. Bell in Cumberland County Superior Court. Heard in the Court of Appeals 7 January 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General Richard L. Harrison, for the State.

David L. Neal for defendant.

TYSON, Judge.

Defendant appeals from his conviction of second degree murder. We find no error.

I. Facts

Defendant and Ronnell Wright were next-door neighbors. An altercation between defendant and Wright ended when defendant fatally stabbed Wright in the chest. On the evening of 29 August 2009, defendant's half-brother, Ronald Jackson, accused Wright of breaking his sliding glass door. An argument ensued

between Jackson and Wright. Wright called the police. Fayetteville police officers arrived at the residence, spoke with Jackson and Wright, and left about twenty minutes later.

Defendant was in the company of his friends, Marqui Gerald and James Williams, when his mother called and told him to come home. Someone had tried to break in the house. Defendant drove home and parked in the driveway. Gerald and Williams arrived in a separate vehicle and parked at Gerald's aunt's house across the street.

Wright was standing in his driveway with his fiancée, his mother, and his two-year old son. Defendant and Wright began shouting at each other. A physical altercation ensued between the two men in Wright's yard. Wright's mother, Aurelia Wright, and his fiancée, Shonda Cromartie, both witnessed the fight. They testified the fight began by defendant punching Wright. According to Ms. Wright and Ms. Cromartie, Wright's two year-old son came near him while he was fighting with defendant. Wright turned away from defendant to move his son out of the way. He picked up the child and moved him one or two feet. As Wright turned back toward defendant, defendant stabbed him in the chest with a knife. Wright did not possess a weapon during the fight.

Defendant is smaller in height and weight than Wright. According to the medical examiner, Wright was five feet, nine inches tall and weighed 164 pounds. Defendant's mother testified that defendant's height is five feet, two inches tall and he weighs about 120 pounds.

James Williams witnessed the fight and testified on behalf of defendant. Because of the size difference between Wright and defendant, Williams testified that it looked as though Wright was fighting with a "kid." He stated that Wright grabbed defendant and defendant's feet were dangling "like a cartoon character." Williams further testified that he was unsure whether Wright and defendant were "locked up" together when defendant stabbed Wright. Williams realized Wright had been stabbed when he lifted up his arm and stated that defendant had stabbed him.

Defendant's half-brother, Ronald Jackson, also witnessed the fight. Jackson testified Wright had punched defendant first and initiated the fight. Wright held defendant in a headlock and the two wrestled. They bounced off a tree, disengaged, and Jackson saw that Wright had been stabbed. Marqui Gerald was inside his aunt's house and did not witness the fight. He testified that defendant always carried a pocketknife on his

belt. He believed the knife had a folding blade four inches long.

Defendant put forth evidence of a dispute that occurred a few days before the fight between Wright and Jackson. A group of people, including Wright and Jackson, were socializing under Wright's carport. Before the day was over, Wright's fiancée's cell phone went missing. Wright went next door to Jackson's house and demanded that Jackson tell his friend, "Squid," to return the phone. He told Jackson there were "going to be some problems." Wright went to the high school that Jackson and Squid attended and told Squid he was going to "beat his ass."

Defendant ran from the scene immediately after he stabbed Wright. Wright walked towards the house and his mother called 911. When police officers arrived, Wright was bleeding badly and losing consciousness. The officers were able to speak briefly with Wright. He told them that he had been involved in an altercation with the neighbor and the neighbor had stabbed him. Wright told the officers that the neighbor said he was going to kill him. Soon thereafter, Wright died of a single stab wound to the left chest.

Defendant was apprehended three days later during a traffic stop in South Carolina. Several firearms were found inside the

car. Defendant possessed a passport bearing the name of Shamsiddeen Muhammand Rasheed in his pocket. A piece of paper was also found inside the car containing the directions to a mosque in Laredo, Texas.

Defendant was indicted on the charge of first degree murder. He was tried capitally before a jury at the 12 August 2013 criminal session of Cumberland County Superior Court. The jury convicted defendant of second degree murder and he was sentenced to a term of 220 to 273 months in prison. Defendant appeals.

II. Issues

Defendant argues the trial court erred in: (1) denying his request for a jury instruction on voluntary manslaughter based on the theory of imperfect self-defense; and, (2) admitting into evidence weapons and ammunition found in the car with him when he was apprehended in South Carolina.

III. Jury Instruction

Defendant argues the trial court erred in denying his request to instruct the jury on voluntary manslaughter based on imperfect self-defense. We disagree.

a. Standard of Review

Whether the evidence is sufficient to warrant defendant's requested jury instruction is a question of law. Our standard of review is *de novo*. *State v. Lyons*, 340 N.C. 646, 662-63, 459 S.E.2d 770, 778-79 (1995). In determining whether the trial court should have instructed the jury on self-defense, we view the facts in the light most favorable to defendant. *State v. Moore*, 111 N.C. App. 649, 654, 432 S.E.2d 887, 889-90 (1993).

b. Imperfect Self-Defense

The trial court instructed the jury on first degree murder, second degree murder and voluntary manslaughter. The voluntary manslaughter instruction was based on the theory of heat of passion. During the charge conference, defendant requested the trial court to also instruct the jury on voluntary manslaughter based on the theory of imperfect self-defense.

"A defendant is entitled to a jury instruction on self-defense when there is evidence from which the jury could infer that he acted in self-defense." *State v. Allred*, 129 N.C. App. 232, 235, 498 S.E.2d 204, 206 (1998). Our Supreme Court has explained:

There are two types of self-defense: perfect and imperfect. Perfect self-defense excuses a killing altogether, while imperfect self-defense may reduce a charge of murder to

voluntary manslaughter. For defendant to be entitled to an instruction on either perfect or imperfect self-defense, the evidence must show that defendant believed it to be necessary to kill his adversary in order to save himself from death or great bodily harm. In addition, defendant's belief must be reasonable in that the circumstances as they appeared to him at the time were sufficient to create such a belief in the mind of a person of ordinary firmness.

State v. Ross, 338 N.C. 280, 283, 449 S.E.2d 556, 559-60 (1994) (internal quotation marks and citations omitted).

A defendant cannot benefit from perfect self-defense and can only claim imperfect self-defense, if he was the aggressor or used excessive force. *State v. Bush*, 307 N.C. 152, 158-59, 297 S.E.2d 563, 568 (1982). "Where there is evidence that defendant acted in self-defense, the court must charge on this aspect even though there is contradictory evidence by the State or discrepancies in defendant's evidence." *State v. Dooley*, 285 N.C. 158, 163, 203 S.E.2d 815, 818 (1974).

The evidence, viewed in the light most favorable to defendant, showed that defendant and Wright engaged in a physical altercation in Wright's yard. Conflicting evidence was presented as to who dealt the first punch. Defendant's two eyewitnesses, Ronald Jackson and James Williams, testified that Wright initiated the fight. Other eye witnesses testified that

defendant initiated the fight. Wright was five feet, nine inches tall and weighed 164 pounds, whereas defendant is five feet, two inches tall and weighs around 120 pounds. Jackson testified Wright held defendant in a headlock and defendant held Wright around the waist as they were fighting. They disengaged and Jackson heard Wright say that he had been stabbed.

Defendant's other eyewitness, James Williams, was unsure whether they were "locked up" when defendant stabbed Wright. Williams testified that during the fight, he saw defendant's feet leave the ground and dangle "like a cartoon character." No evidence was presented that Wright possessed a weapon during the altercation. Defendant elected not to testify at trial. A defendant is not required to testify regarding his state of mind for the trial court to determine sufficient evidence exists to instruct the jury on self-defense. *State v. Revels*, 195 N.C. App. 546, 551, 673 S.E.2d 677, 681, *disc. review denied*, 363 N.C. 379, 680 S.E.2d 204 (2009).

Defendant argues the evidence of his stature and weight compared with that of Wright, and the testimony that Wright held him in a headlock when the stabbing occurred, was sufficient to allow the jury to infer that he reasonably believed it was

necessary to kill Wright to protect himself from death or great bodily harm. We are not persuaded.

Viewed in the light most favorable to defendant, the evidence is insufficient to support an instruction on imperfect self-defense. Ronald Jackson testified that Wright was holding defendant in a "headlock," and defendant was holding Wright around the waist when defendant stabbed Wright in the chest. Although defendant uses the term "choke hold" in his brief, our review found no testimony from any witness, which described him in a "choke hold," "choking" or held in a manner by the victim to impede his ability to breathe.

In support of his argument, defendant cites the case of *State v. Johnson*, 184 N.C. 637, 113 S.E.2d 617 (1922), in which our Supreme Court held a self-defense instruction was required. The evidence showed the defendant stabbed the victim while the victim held the defendant tight around his neck with the defendant's head under his arm. We distinguish this case from the facts presented in *Johnson*. In *Johnson*, the evidence showed that the defendant was attempting to get away from the victim, while the victim struck him about the face and head. The stabbing occurred while the victim had the defendant pinned into a corner. A defendant's unsuccessful attempt to remove himself

from the fight is circumstantial evidence that he believed it necessary to kill his adversary to save himself from death or great bodily harm.

Here, the uncontroverted evidence shows that defendant fully and aggressively participated in the altercation with Wright in the yard of Wright's home. No evidence was presented that defendant tried to get away from Wright or attempted to end the altercation. Where the evidence does not show that defendant reasonably believed it was necessary to stab Wright, who was unarmed, in the chest to escape death or great bodily harm, the trial court properly denied defendant's request for a jury instruction on voluntary manslaughter based upon imperfect self-defense. Defendant's argument is overruled.

IV. Testimony About Defendant's Arrest

Defendant argues the trial court erred in admitting irrelevant and prejudicial evidence of four firearms found in the car when he was arrested following a traffic stop in South Carolina. We disagree.

a. Standard of Review

Whether evidence is relevant is a question of law that we review *de novo*. *State v. Kirby*, 206 N.C. App. 446, 456, 697 S.E.2d 496, 501 (2010). Our Supreme Court has stated, "A trial

court's rulings on relevancy are technically not discretionary, though we accord them great deference on appeal." *State v. Lane*, 365 N.C. 7, 27, 707 S.E.2d 210, 223 (2011). "Evidentiary errors are harmless unless a defendant proves that absent the error a different result would have been reached at trial." *State v. Ferguson*, 145 N.C. App. 302, 307, 549 S.E.2d 889, 893, *disc. review denied*, 354 N.C. 223, 554 S.E.2d 650 (2001).

b. Relevant Evidence of Flight

"Evidence which is not relevant is not admissible." N.C. Gen. Stat. § 8C-1, Rule 402 (2013). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2013).

Defendant argues the testimony about weapons he possessed upon his arrest is irrelevant and inadmissible because there was no evidence connecting the weapons to the crime. In support of his argument, defendant cites *State v. Patterson*, 59 N.C. App. 650, 297 S.E.2d 628 (1982) and *State v. Samuel*, 203 N.C. App. 610, 693 S.E.2d 662 (2010). In *Patterson*, the State introduced evidence of a sawed-off shotgun found in the defendant's car in

addition to the pistol identified by the victim as the weapon used in the commission of the robbery.

This Court granted the defendant a new trial because no evidence connected the shotgun to the robbery and "there [was] a reasonable possibility that the erroneous admission of the shotgun evidence contributed to the defendant's conviction, particularly in light of the conflicting evidence regarding the identity of the defendant as the man who robbed [the victim]." *Id.* at 653-54, 297 S.E.2d at 630.

In *State v. Samuel*, also an armed robbery case, the trial court admitted evidence of two guns found in the defendant's home without any evidence linking the guns to the robbery. Like in *Patterson*, this Court awarded the defendant a new trial, noting "the weakness in the State's evidence that [the] [d]efendant was the assailant and the substantial evidence tending to show that [the] [d]efendant was not the assailant." *Samuel*, 203 N.C. App. at 624, 693 S.E.2d at 671.

We distinguish the facts of this case from those presented in *Patterson* and *Samuel*. In both of those cases, we acknowledged the weakness in the State's evidence that the defendant was the perpetrator of the crime. Here, the identity of defendant as the perpetrator was not in question. More

significantly, in *Patterson* and *Samuel*, the State introduced the firearms as evidence the defendants perpetrated the robberies. Here, the State presented evidence of the weapons to show the circumstances surrounding defendant's flight.

Defendant ran away from the scene immediately after he stabbed Wright. Three days later, he was apprehended following a traffic stop in South Carolina. Defendant, who was riding as a passenger in another person's car, possessed a passport bearing a fictitious name. Also found in the car was a piece of paper with directions to a mosque located in Laredo, Texas. Four firearms were found inside the passenger compartment of the car: a loaded assault rifle, two sawed-off shotguns, and a loaded pistol.

The circumstances surrounding defendant's apprehension in South Carolina, the passport, the paper containing directions to a specific place in Texas, and the firearms are relevant evidence of flight. "An accused's flight is 'universally conceded' to be admissible as evidence of consciousness of guilt and thus of guilt itself." *State v. Jones*, 292 N.C. 513, 525, 234 S.E.2d 555, 562 (1977) (citation and quotation marks omitted). We are not persuaded by defendant's argument that the

State "did not need to introduce the guns in order to argue the flight issue."

Our Supreme Court has recognized that "the degree or nature of the flight is of great importance to the jury." *Id.* at 527, 234 S.E.2d at 562-63. The Court explained that the jury would likely attach a different significance where the defendant fled a short distance to a friend's house than where the defendant attempted to flee the state and assaulted a law enforcement officer in the process. *Id.* at 527, 234 S.E.2d at 563. "Flight is 'relative' proof which must be viewed in its entire context to be of aid to the jury in the resolution of the case." *Id.* The evidence of the firearms found in the car upon defendant's arrest, along with the passport and directions to Laredo, Texas were relevant to show the context of defendant's flight. Defendant's arguments are overruled.

Presuming *arguendo* that the admission of the evidence of the firearms was error, defendant has failed to show any prejudicial error. The trial court instructed the jury as follows:

Evidence has been introduced that the state contends to show that the defendant was a passenger in a car driven and owned by another person. Firearms and other items of evidence were found in that car. These firearms were not used in the stabbing death of Ronnell

Wright and you cannot consider the firearms as evidence of the defendant's intent to kill, malice, proximate cause, premeditation or deliberation. You may only consider the firearms as possible evidence of flight. It is for you, the jury, to determine whether the evidence found in the car is evidence of flight or not. (Emphasis supplied).

Jurors are presumed to have followed the instruction of the trial court. *State v. Hardy*, 353 N.C. 122, 138, 540 S.E.2d 334, 346 (2000), *cert. denied*, 534 U.S. 840, 151 L. Ed. 2d 56, 122 S. Ct. 96 (2001). Even if evidence of the firearms was improperly admitted, any resulting prejudice was cured by the court's limiting instruction. *See State v. Oliver*, 52 N.C. App. 483, 486, 279 S.E.2d 19, 21-22 (1981) (any prejudice to the defendant arising from witness testimony was cured and any error was rendered harmless by the issuance of an instruction to the jury to disregard the testimony).

V. Delay in Trial

Finally, our review of the record shows defendant was arrested on 1 September 2009 and was tried in August and September of 2013, almost four years later. Defendant was given credit for 1,464 days spent in confinement awaiting trial. The record on appeal does not show any motions for speedy trial or arguments of prejudice from defendant.

While we are unaware of the circumstances surrounding the delay in bringing defendant to trial, it is difficult to conceive of circumstances where such delays are in the interest of justice for defendant, his family, or the victim's family, or in the best interests of our citizens in timely and just proceedings. See *State v. Spivey*, 150 N.C. App. 189, 192, 563 S.E.2d 12, 14 (2002) (Timmons-Goodson, J., dissenting), *aff'd*, 357 N.C. 114, 579 S.E.2d 251 (2003) ("This Court cannot continue to overlook such substantial delays because of congested dockets. Under our unified court system and the constitutional right to a speedy trial, the court's resources must not be viewed from the perspective of a single judicial district, but system-wide. A lack of personnel or court sessions in a single judicial district is not a sufficient reason to maintain a defendant who is presumed innocent, confined in jail for four and a half years awaiting his or her day in court.").

VI. Conclusion

The trial court properly denied defendant's request for a jury instruction on voluntary manslaughter based on the theory of imperfect self-defense. The evidence failed to show defendant reasonably believed it was necessary to kill Wright to save himself from death or great bodily harm.

The trial court did not err in admitting evidence of multiple loaded firearms and other evidence found with defendant in the car upon his arrest in South Carolina. This evidence was relevant to flight. The trial court gave a proper limiting instruction to the jury concerning this evidence. Defendant received a fair trial, free from errors he preserved, assigned and argued.

No error.

Judges ELMORE and DAVIS concur.